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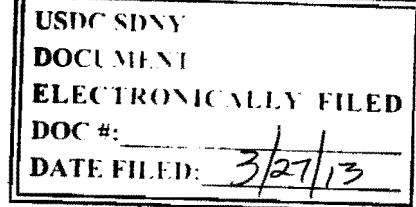
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March 26, 2013

BY EMAIL

Honorable Paul A. Engelmayer  
United States District Judge  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007



Re: *Chesapeake Energy Corporation v. The Bank of New York Mellon Trust Company, N.A.*, No. 13 CV 1582 (PAE)

Dear Judge Engelmayer:

We represent defendant The Bank of New York Mellon Trust Company, N.A. (“BNY Mellon”) in this action and write in very brief response to the letter and proposed order concerning privilege waiver submitted by Plaintiff’s counsel yesterday. BNY Mellon does not object to entry of the proposed order, subject to one requested addition and one reservation, set forth below.

First, BNY Mellon respectfully requests that the proposed order confirm that all objections to admissibility be preserved. Without arguing the matter here, we anticipate that questions will arise regarding whether the previously undisclosed communications between Plaintiff and its counsel will be admissible.

Second, to date, Plaintiff has produced fewer than 85 non-privileged documents altogether, and BNY Mellon is not yet in a position to assess whether the date restrictions that Plaintiff seeks to impose with respect to its subject-matter waiver (February 8, 2012 until February 22, 2013) are appropriate. For this reason, BNY Mellon reserves all rights to assert



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that the subject-matter waiver should be applied earlier and/or later in time based on discovery.

Respectfully submitted,

A handwritten signature in black ink that reads "Steven M. Bierman".

Steven M. Bierman

cc: Counsel of Record (by email)

The Court has signed the proposed order concerning privilege waiver. The Court notes that Chesapeake does not object to the two points raised in Mr. Bierman's letter. The Court accordingly (1) confirms that all objections to the admissibility of the communications in question are preserved, and (2) recognizes BNY Mellon's reservation of its right to assert that the date of the subject-matter waiver should be broadened. The Court appreciates counsels' constructive approach to the privilege issue and will benefit by having access to the communications covered by the privilege waiver.

SO ORDERED:

3/27/13

A handwritten signature in black ink that reads "Paul A. Engelmayer".

HON. PAUL A. ENGELMAYER  
UNITED STATES DISTRICT JUDGE